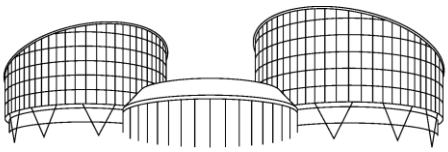

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ARKHESTOV AND OTHERS v. RUSSIA

(Application no. 22089/07)

JUDGMENT

STRASBOURG

16 January 2014

FINAL

16/04/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Arkhestov and Others v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 17 December 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22089/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Russian nationals, Mr Khusen Kadirovich Arkhestov, Mrs Kulisum Zhantuganovna Balkizova, Mrs Asiyat Kunakovna Guziyeva, Mr Askarbi Khamidovich Zhekamukhov, Mr Arsen Khazhmatsafovich Tukov, Mrs Mariya Latifovna Khuranova and Mrs Lyuda Khazhmuradovna Shogenova ("the applicants"), on 10 April 2007.

2. The applicants were represented by Mr O.E. Solvang, Mr R. Lemaître, Mrs A. Maltseva, Mrs E. Yezhova, Mr A. Nikolayev, Mr G. Avetisyan, Mrs D. Boyarchuk, Mr D. Itslayev, Mrs V. Kogan and Mr A. Sakalov, lawyers from Stichting Russian Justice Initiative, Moscow, and Mrs L. Dorogova, a lawyer practising in the town of Nalchik. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that the circumstances of identification of their deceased family members had been inhuman and degrading and that the decision not to return the bodies of these persons to their families had been unlawful and disproportionate, in breach of Articles 3, 8 and 9, taken alone and in conjunction with Articles 13 and 14 of the Convention.

4. On 31 August 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The attack of 13 October 2005 and subsequent events

5. Early in the morning of 13 October 2005 law-enforcement agencies in the town of Nalchik, the Republic of Kabardino-Balkariya, were attacked by a number of heavily armed people, who appear to have been local insurgents. The agencies included the Republican Department of the Ministry of the Interior, Centre T of the Main Department of the Ministry of the Interior, various district departments of the Ministry of the Interior, the Special Purpose Police Unit of the Republican Ministry of the Interior, various checkpoints of the Traffic Police, the Republican Department of the Federal Security Service, the Republican Department of the Federal Service for the Execution of Penalties and the office of the Border Guard Service of the Federal Security Service. Also, a few privately owned weapon shops were attacked. According to the Government, there were over two hundred and fifty participants in the attack.

6. The ensuing fight between the governmental forces and the insurgents lasted until at least 14 October 2005.

B. The family links of the applicants and the deceased

7. The first, second, third, fifth and seventh applicants submit that they are relatives of the people whose dead bodies were found following the events of 13 and 14 October 2005 (see paragraphs 8, 9, 10, 12 and 14). The fourth applicant claims that his son was killed by State agents in the village of Anzorey in the Leskenskiy District of the Republic of Kabardino-Balkariya on 6 January 2006 (see paragraph 11). The sixth applicant claims that her son was killed by State agents in the town of Nalchik on 12 November 2005 (see paragraph 13). All of the applicants live in the Republic of Kabardino-Balkaria and, unless stated otherwise, are residents of Nalchik.

8. The first applicant, Mr Khusen Kadirovich Arkhestov, born in 1954, referred to the death of his son Mr Lokman Khusenovich Arkhestov, born on 30 December 1989.

9. The second applicant, Mrs Kulisum Zhantuganovna Balkizova, born in 1956, referred to the death of her son Mr Kantemir Safudinovich Balkizov, born on 29 March 1982.

10. The third applicant, Mrs Asiyat Kunakovna Guziyeva, born in 1976, referred to the death of her husband Mr Arsen Gumarovich Margushev, born on 6 January 1979.

11. The fourth applicant, Mr Askarbi Khamidovich Zhekamukhov, born in 1955, referred to the death of his son Mr Albert Askarbiyevich Zhekamukhov, born on 23 November 1980.

12. The fifth applicant, Mr Arsen Khazhmastafovich Tukov, born in 1939, referred to the death of his son Mr Anatoliy Arsenovich Tukov, born on 3 August 1974.

13. The sixth applicant, Mrs Mariya Latifovna Khuranova, who was born in 1955 and lives in the village of Shalushka, referred to the death of her son Mr Azamat Anatolyevich Brayev, born on 29 July 1975.

14. The seventh applicant, Mrs Lyuda Khazhmuradovna Shogenova, who was born in 1965 and lives in the village of Zalukokoazhe, referred to the death of her brother Mr Aslan Khadzmuratovich Shogenov, born on 26 January 1965.

15. The Government did not dispute this information.

C. Criminal case no. 25/78-05

1. Decision to initiate proceedings of 13 October 2005

16. It appears that on 13 October 2005 the authorities instituted criminal proceedings no. 25/78-05 in connection with the attack in Nalchik.

17. In the course of the investigation it was established that between 1999 and February 2005 a group of individuals including A. Maskhadov, Sh. Basayev, I. Gorchkhanov, A. Astemirov, Abu-Valid Khattab and Abu-Dzeit, had formed a terrorist group. It was this group that organised the attack. Thirty-five law-enforcement officers and fifteen civilians were killed, whilst one hundred and thirty-one law-enforcement officers and ninety-two civilians were injured. Massive damage was done to property.

18. The applicants did not have any procedural status in the criminal proceedings in case no. 25/78-05.

2. The applicants' letters to the authorities in the initial stages of the investigation

19. Immediately following the attack, an unspecified number of people (including some of the applicants) signed collective petitions requesting various officials, including the prosecutors, to return the bodies for burial.

20. Between the end of October 2005 and until at least April 2006 the applicants received replies from the prosecution and other authorities informing them that they would receive definite answers once the investigation into the events had been completed.

21. Attempts by some of the applicants to challenge these replies in the domestic courts were unsuccessful, as they were rejected as premature both at first instance and on appeal.

3. Decisions not to prosecute insurgents killed in the attack dated 13 April 2006

22. On 13 April 2006 the investigation authority terminated the criminal proceedings in respect of the ninety-five deceased on account of their deaths, having taken an individual decision in respect of each deceased person. Each decision described the degree and character of their individual involvement and concluded that these persons had taken part in the attack and died as a result of the ensuing fight. The decisions described the circumstances of death of the persons referred to by the applicants; they are set out below. The respondent Government have submitted the investigation case file in respect of the circumstances of death of each of the deceased persons.

23. The son of the first applicant, Lokman Khusenovich Arkhestov, was found to have taken part in the attack of 13 October 2005. He died in the exchange of gunfire which followed the collective attempt by the attackers to storm a building of the Federal Service for the Execution of Penalties.

24. The son of the second applicant, Kantemir Safudinovich Balkizov, was found to have taken part in the attack of 13 October 2005. He died in the exchange of gunfire which followed the collective attempt by the attackers to storm a building of the Ministry of the Interior.

25. The husband of the third applicant, Arsen Gumarovich Margushev, was found to have taken part in the attack of 13 October 2005. He died in the exchange of gunfire which followed the collective attempt by the attackers to storm a building of the Ministry of the Interior.

26. The son of the fourth applicant, Albert Askarbiyevich Zhekamukhov, was found to have taken part in the attack of 13 October 2005 and subsequently to have escaped from Nalchik and gone into hiding. He was located in the village of Anzorey in the Leskenskiy District of the Republic of Kabardino-Balkariya on 6 January 2006. After rejecting a call to give himself up, he died as a result of a failed attempt to arrest him.

27. The son of the fifth applicant, Anatoliy Arsenovich Tukov, was found to have taken part in the attack of 13 October 2005. He died in the exchange of gunfire which followed the collective attempt by the attackers to storm a building of the Ministry of the Interior.

28. The son of the sixth applicant, Azamat Anatolyevich Brayev, was found to have taken part on 12 October 2005 in an exchange of gunfire with police officers preceding the main attack of 13 October 2005. He belonged to the same group as the attackers, but was detected by police officers by chance one day prior to the attack.

29. The brother of the seventh applicant, Aslan Khazhmuratovich Shogenov, was found to have taken part in the attack of 13 October 2005. He died in the exchange of gunfire which followed the collective attempt by the attackers to storm a building of the Ministry of the Interior.

30. The Prosecutor General's Office notified the applicants of the above decisions on 14 April 2006, but no copies of the decisions in question were attached to the notifications.

31. In the Strasbourg proceedings the Government submitted copies of the decisions of 13 April 2006 in respect of each of the applicants' relatives.

32. The applicants were furnished with death certificates in respect of their relatives:

Names	Dates of Death	Dates of Issue	Cause of Death
1. Lokman Khusenovich Arkhestov	13/10/2005	19/07/2007	Multiple gunshot wounds to head, chest and extremities
2. Kantemir Safudinovich Balkizov	13/10/2005	6/11/2005	No information
3. Arsen Gumarovich Margushev	13/10/2005	17/11/2005	No information
4. Albert Askarbiyevich Zhekamukhov	6/01/2006	9/06/2006	Massive loss of blood, multiple shrapnel wounds to the head, chest and extremities
5. Anatoliy Arsenovich Tukov	13/10/2005	7/12/2005	No information
6. Azamat Anatolyevich Brayev	12/10/2005	3/07/2007	Massive loss of blood, multiple gunshot wounds to the head, chest and extremities
7. Aslan Khadzmuratovich Shogenov	13/10/2005	13/01/2006	No information

4. Decision not to return the bodies of the deceased to their families dated 15 May 2006

33. According to the Government, ninety-five corpses of the presumed terrorists were cremated on 22 June 2006.

34. The cremation took place pursuant to a decision not to return the bodies of the deceased to their families, dated 15 May 2006. In contrast to the individual decisions of 13 April 2006, the decision of 15 May 2006 referred to the deceased persons collectively. The decision stated, in particular:

> "... the head of investigation group ... [official S.], having examined the materials in case file no. 25/78-05, established: ... [that] in the course of the counter-terrorist special operation aimed at tackling the attack, 95 terrorists were eliminated, namely:
>
> [the decision names among the deceased all of the persons referred to by the applicants]
>
> At present all forensic expert examinations, including molecular genetic examinations, involving ... the corpses of the deceased terrorists, have been finalised and their identities have been established by way of proper procedure.
>
> By decisions of 13-14 April 2006 the criminal proceedings in respect of these 95 persons, who had committed ... the attack on various sites and law-enforcement agents of the town of Nalchik ... was discontinued on account of their deaths, under Article 27 part 1 subpart 2 and Article 24 part 1 subpart 2 of the Code of Criminal Procedure.
>
> Pursuant to section 14(1) of the Federal Interment and Burial Act (Law no. 8-FZ) 'the interment of persons against whom a criminal investigation in connection with their terrorist activities has been closed because of their death following interception of the said terrorist act shall take place in accordance with the procedure established by the Government of the Russian Federation. Their bodies shall not be handed over for burial and the place of their burial shall not be revealed.'
>
> Pursuant to part 3 of Decree no. 164, 'On interment of persons whose death was caused by the interception of terrorist acts carried out by them', approved by the Government of the Russian Federation on 20 March 2003, 'the interment of [these] persons shall take place in the locality where death occurred and shall be carried out by agencies specialising in funeral arrangements, set up by organs of the executive branch of the subjects of the Russian Federation or by organs of local government ...'.
>
> [In view of the above, official S. decided to:]
>
> 1. bury the bodies of the 95 terrorists ...
>
> 2. forward the decision to the President of the Republic of Kabardino-Balkariya for execution;
>
> 3. inform [his superiors] of this decision".

35. The Government alleged that the authorities had notified the applicants of the decision of 15 May 2006, but acknowledged that no copy of that decision had been provided to them.

36. It appears that on several occasions the Prosecutor General's Office informed the applicants, in substance, of the refusal to return the bodies. It does not appear that the applicants were furnished with a copy of the decision of 15 May 2006.

5. The applicants' attempts to bring court proceedings in respect of these two decisions

37. The applicants' initial attempts to obtain judicial review of the decisions of 13 April and 15 May 2006 were unsuccessful, as the courts refused to examine their arguments.

(a) Proceedings before the Constitutional Court

38. The relatives of those who had taken part in the attack of 13 October 2005 contested the legislation governing the interment of terrorists before the Constitutional Court.

39. On 28 June 2007 the Constitutional Court delivered a judgment (no. 8-P) in which, in essence, it rejected their complaints alleging that section 14(1) of the Interment and Burial Act and Decree no. 164 of the Government of the Russian Federation of 20 March 2003 were unconstitutional. The ruling stated, in particular, that the impugned legal provisions were, in the circumstances, necessary and justified. The court reached the following conclusions regarding the legitimate aims and necessity of the legislation in question:

> "... At the same time, the interest in fighting terrorism, in preventing terrorism in general and specific terms and in providing redress for the effects of terrorist acts, coupled with the risk of mass disorder, clashes between different ethnic groups and aggression by the next of kin of those involved in terrorist activity against the population at large and law-enforcement officials, and lastly the threat to human life and limb, may, in a given historical context, justify the establishment of a particular legal regime, such as that provided for by section 14(1) of the Federal Act, governing the burial of persons who escape prosecution in connection with terrorist activity on account of their death following the interception of a terrorist act ... Those provisions are logically connected to the provisions of paragraph 4 of Recommendation 1687 (2004) of the Parliamentary Assembly of the Council of Europe on combating terrorism through culture, dated 23 November 2005, in which it was stressed that extremist interpretations of elements of a particular culture or religion, such as heroic martyrdom, self-sacrifice, apocalypse or holy war, as well as secular ideologies (nationalist or revolutionary) could also be used for the justification of terrorist acts.
>
> 3.2. Action to minimise the informational and psychological impact of the terrorist act on the population, including the weakening of its propaganda effect, is one of the means necessary to protect public security and the morals, health, rights and legal interests of citizens. It therefore pursues exactly those aims for which the Constitution

of the Russian Federation and international legal instruments permit restrictions on the relevant rights and freedoms.

The burial of those who have taken part in a terrorist act, in close proximity to the graves of the victims of their acts, and the observance of rites of burial and remembrance with the paying of respects, as a symbolic act of worship, serve as a means of propaganda for terrorist ideas and also cause offence to relatives of the victims of the acts in question, creating the preconditions for increasing inter-ethnic and religious tension.

In the conditions which have arisen in the Russian Federation as a result of the commission of a series of terrorist acts which produced numerous human victims, resulted in widespread negative social reaction and had a major impact on the collective consciousness, the return of the body to the relatives ... may create a threat to social order and peace and to the rights and legal interests of other persons and their security, including incitement to hatred and incitement to engage in acts of vandalism, violence, mass disorder and clashes which may produce further victims. Meanwhile, the burial places of participants in terrorist acts may become a shrine for certain extremist individuals and be used by them as a means of propaganda for the ideology of terrorism and involvement in terrorist activity.

In such circumstances, the federal legislature may introduce special arrangements governing the burial of individuals whose death occurred as a result of the interception of a terrorist act in which they were taking part. ...”

40. The ruling further noted that the application of the measures prescribed in the legislation could be regarded as justified if proper procedural safeguards, such as effective judicial review, were in place to protect individuals from arbitrariness. The court noted that Articles 123-127 of the Code of Criminal Procedure provided for such review.

41. In sum, the Constitutional Court upheld the impugned provisions as being in conformity with the Constitution but at the same time interpreted them as requiring that the authorities refrain from burying bodies unless a court had confirmed the competent authority’s decision. It reasoned as follows:

“... The constitutional and legal meaning of the existing norms presupposes the possibility of bringing court proceedings to challenge a decision to discontinue, on account of the deaths of the suspects, a criminal case against or prosecution of participants in a terrorist act. Accordingly, they also presuppose an obligation on the court’s part to examine the substance of the complaint, that is, to verify the lawfulness and well-foundedness of the decision and the conclusions therein as regards the participation of the persons concerned in a terrorist act, and to establish the absence of grounds for rehabilitating [the suspects] and discontinuing the criminal case. They thus entail an examination of the lawfulness of the application of the aforementioned restrictive measures. Until the entry into force of the court judgment the deceased’s remains cannot be buried; the relevant State bodies and officials must take all necessary measures to ensure that the bodies are disposed of in accordance with custom and tradition, in particular through the burial of the remains in the ground ... or by [cremation], individually, if possible, and to ensure compliance prior thereto with the requirements concerning the identification of the deceased ... and of the time, location and cause of death ...”

42. Judge G.A. Gadzhiyev issued a separate opinion in which he agreed that the impugned provisions were in conformity with the Constitution but held a different view as to how they should be interpreted. The opinion stated as follows:

> "... if the relevant law-enforcement agencies find, as a result of a preliminary investigation, that a terrorist act has been committed and that a given person was involved, but the criminal proceedings against that person ... are discontinued on account of his or her death following interception of the terrorist act, and if they then conclude that the decision to return the body to the family for burial is capable of threatening public order and peace and the health, morals, rights, lawful interests and safety of others, they are entitled to take a decision refusing to hand over the body and applying special arrangements for burial.
>
> At the same time, in the event of a refusal to return the body of an individual whose death occurred as the result of the interception of a terrorist act committed by him, the authorities competent to take a decision concerning the burial must secure compliance with all the requirements concerning the establishment of the deceased's identity, the time and place of death, the cause of death, the place of burial and the data necessary for the proper identification of the grave (a given location and number). The burial must take place with the participation of the relatives, in accordance with custom and tradition and with humanitarian respect for the dead. The administrative authorities of a State governed by the rule of law must respect the cultural values of a multi-ethnic society, transmitted from generation to generation. ..."

43. Judge A.L. Kononov issued a dissenting opinion in which he described the legislation in question as incompatible with the Constitution. In particular, he noted:

> "... The impugned norms banning the return of the deceased's bodies to their relatives and providing for their anonymous burial are, in our view, absolutely immoral and reflect the most uncivilised, barbaric and base views of previous generations ...
>
> The right of every person to be buried in a dignified manner in accordance with the traditions and customs of his family hardly requires special justification or even to be secured in written form in law. This right is clearly self-evident and stems from human nature as, perhaps, no other natural right. Equally natural and uncontested is the right of every person to conduct the burial of a person who is related and dear to them, to have an opportunity to perform one's moral duty and display one's human qualities, to bid farewell, to grieve, mourn and commemorate the deceased, however he may be regarded by society and the state, to have the right to a grave, which in all civilisations represents a sacred value and the symbol of memory. ..."

(b) Subsequent proceedings

44. After the Constitutional Court's judgment of 28 June 2007 the domestic courts apparently changed their approach and agreed to review the formal lawfulness of the decisions of 13 April and 15 May 2006.

45. The applicants brought the following court proceedings in connection with the relevant decisions.

	First instance judgment of the Nalchik Town Court	Appeal decision of the Supreme Court of the Republic of Kabardino-Balkariya
First applicant	14/09/2007 (decision of 13 April 2006 quashed)	4/12/2007 (upheld)
	16/11/2007 (decision of 13 April 2006 quashed)	20/5/2008 (upheld)
Second applicant	6/11/2007 (decision of 13 April 2006 quashed)	Judgment was not appealed against and became final on 16 November 2007
Third applicant	19/11/2007 (decision of 13 April 2006 quashed)	25/1/2008
Fourth applicant	27/12/2007 (decision of 13 April 2006 quashed)	1/04/2008
Fifth applicant	19/11/2007 (decision of 13 April 2006 quashed)	25/1/2008
Sixth applicant	19/11/2007 (decision of 13 April 2006 quashed)	25/1/2008
Seventh applicant	28/01/2008 (decision of 13 April 2006 quashed)	11/03/2007

46. As a result of the above-mentioned sets of proceedings the applicants succeeded in having quashed the decisions of 13 April and 15 May 2006 in part. It appears that the domestic courts subsequently changed their position and the relevant judgments were later quashed by way of supervisory review. After these changes, the courts still could not review the need for application of the measures set out in section 14 (1) of the Interment and Burial Act and Decree no. 164 of 20 March 2003 in individual cases.

D. The conditions of storage and identification of the bodies of the deceased following the attack of 13 October 2005

47. According to the applicants who took part in the identification of the bodies, for several days following the events of 13 and 14 October 2005 the corpses (except for the bodies of the relatives of the fourth and sixth applicant, who died at other dates and were identified later) were kept in the town morgue and other locations in wholly unsatisfactory conditions. In

particular, the bodies gave off an intense smell owing to the lack of proper refrigeration and were chaotically piled on top of one other.

48. In response to a letter from the applicants requesting an explanation for the appalling storage conditions, the Prosecutor General's Office stated in a letter of 14 April 2006 that until a procedural decision in respect of the corpses had been taken they had been kept in specially equipped rooms in refrigerated chambers set to the appropriate temperature. The authorities refused to disclose the locality where the bodies were stored.

49. According to the Government, the following applicants participated in the identification procedure in person:

No.	The applicants	Participation in identification
1	Mr Khusen Kadirovich Arkhestov	on 16 October 2005
2	Mrs Kulisum Zhantuganovna Balkizova	No, the deceased was identified by his brother, Mr Ramzan Safudinovich Balkizov
3	Mrs Asiyat Kunakovna Guziyeva	No, the deceased was identified by his sister, Mrs Anzhela Gumarovna Margusheva
4	Mr Askarbi Khamidovich Zhekamukhov	No, the deceased was identified by his mother, Mrs Fatima Magomedovna Zhekamukhova
5	Mr Arsen Khazhmastafovich Tukov	No, the body was identified through a genetic expert examination
6	Mrs Mariya Latifovna Khuranova	No, the deceased was identified by his father, Mr Anatoly Bashirovich Brayev
7	Mrs Lyuda Khazhmuradovna Shogenova	Yes, on 20 October 2005

50. According to the applicants, they had access to the bodies both in the Nalchik town morgue and in two refrigerator wagons parked on a plot of land belonging to the Ministry of the Interior. Provision of access to the bodies was random, as not everyone who wanted to take part in the identification process was admitted. In some cases the provision of access was not properly documented. Since the provision of access was limited, the relevant facilities were usually surrounded by crowds of relatives of the deceased.

51. The Government submitted that the corpses in question had been initially held in the Nalchik town morgue. Between 14 and 18 October 2005 the applicants examined the corpses and the clothing. Thereafter the bodies were placed in two refrigerator wagons. On 1 November 2005 the wagons were moved to the town of Rostov-on-Don for molecular genetic examinations and on 22 June 2006 all bodies were cremated. Between

13 and 22 October 2005 the person in charge of the identification procedure was the head of the investigation group investigator P. As of 22 October 2005 he was replaced by investigator S. The Government also acknowledged that immediately after the attack no facilities had been available to keep the bodies.

52. According to the Government's most recent submissions, the overall number of human casualties as a result of the events of 13 October 2005 was twelve civilians, thirty-five police and law-enforcement officers and eighty-seven participants in the attack.

II. RELEVANT DOMESTIC LAW AND PRACTICE

53. For a summary of the relevant domestic law, see *Sabanchiyeva and Others v. Russia*, no. 38450/05, §§ 33-37 and 65-90, ECHR 2013 (extracts) and *Maskhadova and Others v. Russia*, no. 18071/05, §§ 116-146, 6 June 2013.

III. OTHER RELEVANT SOURCES

54. For a summary of other relevant sources referred to by the applicants, see *Sabanchiyeva and Others*, cited above, §§ 91-96 and also *Maskhadova and Others*, cited above, §§ 147-150.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

55. The applicants complained about the conditions in which the bodies of their deceased relatives had been stored during the identification process. Except for the fourth and the sixth applicant who did not take part in the identification, they were also dissatisfied with the circumstances of their personal participation in the identification process. According to the applicants, this treatment by the authorities caused them such mental suffering that this amounted to a breach of Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The submissions by the parties

56. The Government disagreed. They submitted that following the events in question the corpses had first been sent to the Nalchik morgue, where they had been stripped and the clothes had been sent for forensic examination. Thereafter all the corpses had been placed in two refrigerated wagons equipped with all necessary storage facilities. Some time later the corpses were sent to the town of Rostov-on-Don for genetic examination. They also acknowledged that immediately after the attack no facilities had been available to store the bodies and that this had probably been referred to in the video-recording submitted by the applicants. At the same time, the Government also mentioned that participation in the identification process had been voluntary.

57. The applicants maintained their complaints. They argued that the Government's list of the participants in the identification procedure was inaccurate and that the conditions in question were inhuman and degrading both to them and to their deceased relatives.

B. The Court's assessment

1. Admissibility

58. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

59. The Court has observed on many occasions that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or organised crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation (see, among other authorities, *Aksoy v. Turkey*, 18 December 1996, § 62, *Reports of Judgments and Decisions* 1996-VI). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and,

in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

60. As regards complaints about moral suffering brought under Article 3 of the Convention by relatives of alleged victims of security operations carried out by the authorities, the Court has adopted a restrictive approach, stating that while a family member of a "disappeared person" can claim to be a victim of treatment contrary to Article 3 (see *Kurt v. Turkey*, 25 May 1998, §§ 130-34, *Reports* 1998-III), the same principle would not usually apply to situations where the person taken into custody has later been found dead (see, for example, *Tanlı v. Turkey*, no. 26129/95, § 159, ECHR 2001-III; *Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005; and *Bitiyeva and Others v. Russia*, no. 36156/04, § 106, 23 April 2009). In such cases the Court has normally limited its findings to Article 2. On the other hand, the Court has found a violation of Article 3 on account of mental suffering endured by applicants as a result of the acts of security forces who had burnt down their homes and possessions before their eyes (see *Selçuk and Asker v. Turkey*, 24 April 1998, §§ 77-80, *Reports* 1998-II; *Yöyler v. Turkey*, no. 26973/95, §§ 74-76, 24 July 2003; and *Ayder and Others v. Turkey*, no. 23656/94, §§ 109-11, 8 January 2004).

61. Finally, the Court reiterates its established case-law according to which allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, § 161).

(b) The application of these principles

62. The parties agreed that between 14 and 18 October 2005 the bodies of those who died as a result of the events of 13-14 October 2005 were stored in the Nalchik town morgue and that from 19 to 31 October 2005 they were placed in two refrigerator wagons on the outskirts of Nalchik (see paragraphs 48-50 and 51). It is also undisputed that the overall number of casualties resulting from the attack greatly exceeded the storage capacity of the relevant local facilities and that for the first four days some of the bodies had to be stored outside.

63. The Court has little doubt that in view of the conditions of storage of the bodies the applicants, as relatives of the deceased, may have endured some degree of mental suffering in this connection. This was even more so, if they volunteered to participate in the identification procedure in person. According to the information available to the Court, the first applicant, Mr Khusen Kadirovich Arkhestov, and the seventh applicant, Mrs Lyuda

Khazhmuratovna Shogenova, participated in the identification personally (see paragraph 49 above).

64. The Court's task is to ascertain whether in view of the specific circumstances of the case that suffering had a dimension capable of bringing it within the scope of Article 3.

65. The Court would note, firstly, that the present case is different from the cases brought before the Court by family members of the victims of "disappearances" or extra-judicial killings committed by the security forces (see, for example, *Luluyev and Others v. Russia*, no. 69480/01, §§ 116-118, ECHR 2006-XIII (extracts)). The death of the applicants' relatives in the present case did not result from any actions by the authorities in contravention of Article 2 of the Convention (compare to *Esmukhambetov and Others v. Russia*, no. 23445/03, §§ 138-151 and 190, 29 March 2011) and the applicants cannot be said to have been suffering from any prolonged uncertainty regarding the fate of their relatives (compare to *Luluyev and Others*, cited above, §§ 116-118).

66. The Court further notes that the present case is also distinguishable from the Turkish cases concerning the deliberate destruction of property that the applicants were made to witness. In particular, in the case of *Selçuk and Asker* the Court had regard to the manner in which the applicants' homes had been destroyed, and namely to the fact that the exercise had been premeditated and carried out contemptuously and without respect for the feelings of the applicants, whose protests had been ignored (see *Selçuk and Asker*, cited above, § 77), and, with this in mind, found that the acts of the security forces had amounted to "inhuman treatment" within the meaning of Article 3 of the Convention. A similar line of reasoning appears to be implicit in the cases of *Yöyler* and *Ayder and Others* (both cited above). In the above-mentioned cases the security forces burnt the applicants' homes and possessions with a view to causing them mental suffering, which enabled the Court to find a violation of Article 3 on that account.

67. In the present case, however, the Court has no evidence to be able to reach the same conclusion. It is true that, as admitted by the Government, the relevant local facilities for refrigerated storage of corpses during the first four days may have been insufficient to contain all of the bodies (see paragraph 51 above) and that even thereafter the bodies had to be piled on top of one another for storage in the refrigerator wagons (see paragraphs 47 and 50 above). However, these lapses resulted from objective logistical difficulties arising from the character of the events of 13-14 October 2005 and the number of casualties and can hardly be said to have had as its purpose to subject the applicants to inhuman treatment, and in particular, to cause them moral suffering.

68. To sum up, the Court does not find that the circumstances could give the suffering of the first and the seventh applicants or the other applicants who were simply aware of the difficult conditions of storage of the dead

bodies of their relatives a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to any family member of a deceased person in a comparable situation. The Court is therefore unable to find a violation of Article 3 of the Convention in the circumstances of the present case.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

69. Relying on Article 8 of the Convention, the applicants also complained about the authorities' refusal to return the bodies of their deceased relatives. This provision reads as follows:

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The submissions by the parties

70. The Government maintained that the decision not to return the bodies of the applicants' relatives had been taken pursuant to the Suppression of Terrorism Act, the Interment and Burial Act and the decree on combating terrorism and were justified in view of the reasons provided by the Constitutional Court in its ruling of 28 June 2007 (see *Maskhadova and Others*, cited above, § 125). They stated that all of the applicants had received official notification and answers from the authorities and that no restrictions had been placed on access to court in connection with the decisions in question.

71. The applicants stated that the authorities' refusal to return the bodies had been unlawful and disproportionate. Firstly, they argued that the refusal had been unlawful in that the Constitutional Court's judgment imposed on the authorities an obligation to await the outcome of the investigation before deciding whether to return the bodies and that the authorities had clearly failed to comply with that obligation. In addition, the fourth and sixth applicant allegedly did not fall within the ambit of the relevant domestic legal provision authorising the measure in question. Secondly, they submitted that the law contained vague notions such as "terrorist action", "terrorist activity" and "terrorist act" and was unclear as regards the cremation policy (the applicants were aggrieved that their relatives had been

cremated rather than buried), the specific official with authority to take the decision, the possibility of bringing appeal proceedings, the policy concerning the disclosure of the date of the burials, and the need to observe rituals during the burials. Thirdly, they submitted that the measure was disproportionate in that no other European country had similar legislation; that while the Israeli authorities had had a similar administrative policy, this had since been condemned by the Israeli courts; that international humanitarian law prohibited such treatment and that other, less restrictive, measures were available to the authorities to address terrorism-related concerns.

B. The Court's assessment

1. Admissibility

72. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Whether Article 8 was applicable in the present case

73. The Court reiterates that under its Article 8 case-law the concepts of "private life" and "family life" are broad terms not susceptible to exhaustive definition (see, for example, *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). In the cases of *Pannullo and Forte v. France* (no. 37794/97, §§ 35-36, ECHR 2001-X) and *Girard v. France* (no. 22590/04, § 107, 30 June 2011) the Court recognised that an excessive delay in the restitution of the body after an autopsy or of bodily samples on completion of the relevant criminal proceedings may constitute an interference with both the "private life" and the "family life" of the surviving family members. In the case of *Elli Poluhas Dödsbo v. Sweden* (no. 61564/00, § 24, ECHR 2006-I) the Court found that the refusal to transfer an urn containing the ashes of the applicant's husband could also be seen as falling within the ambit of Article 8. Lastly, in the case of *Hadri-Vionnet v. Switzerland* (no. 55525/00, § 52, 14 February 2008) the Court decided that the possibility for the applicant to be present at the funeral of her stillborn child, along with the related transfer and ceremonial arrangements, was also capable of falling within the ambit of both "private" and "family life" within the meaning of Article 8.

74. The Court firstly notes that the Government did not dispute that the decision of 15 May 2006 constituted an interference with the applicants' rights to private and family life protected by Article 8 of the Convention.

75. The Court further observes that on 15 May 2006, having finalised the investigative actions in respect of the bodies of the deceased persons, the investigator decided not to return the bodies to the applicants and ordered their burial in an unspecified location (see paragraph 34 above). This decision was taken in accordance with Article 3 of Decree no. 164 of 20 March 2003 and section 14(1) of the Interment and Burial Act, which precluded the competent authorities from returning the bodies of terrorists who died as a result of the interception of a terrorist act.

76. Having examined the applicable domestic legislation, the Court finds that in Russia the relatives of a deceased person who are willing to organise that person's interment generally enjoy a statutory guarantee of having the body of that person returned to them for burial promptly after the establishment of the cause of death. They also benefit from a legal regime which makes them either the executors of the deceased's statement of wishes as regards the burial proceedings or permits them to decide how the burial will take place, with both options being subject only to general safety and sanitary rules (see sections 3 to 8 of the Interment and Burial Act in the *Sabanchiyeva and Others* judgment, cited above, § 65).

77. Against this background, the Court finds that the authorities' refusal to return the bodies of the applicants' relatives with reference to section 14(1) of the Interment and Burial Act and Article 3 of Decree no. 164 of 20 March 2003 constituted an exception from that general rule and clearly deprived the applicants of an opportunity to organise and take part in the burial of their relatives' bodies and also to know the location of the gravesite and to visit it subsequently.

78. Regard being had to its case-law and the above-mentioned circumstances of the case, the Court finds that the measure in question constituted an interference with the applicants' "private" and "family life" within the meaning of Article 8 of the Convention (see *Sabanchiyeva and Others*, cited above, § 123 and *Maskhadova and Others*, cited above, § 212). It remains to be seen whether this interference was justified under the second paragraph of that provision.

(b) Whether the interference was justified

(i) "In accordance with the law"

79. Under the Court's case-law, the expression "in accordance with the law" in Article 8 § 2 requires, among other things, that the measure or measures in question should have some basis in domestic law (see, for example, *Aleksandra Dmitriyeva v. Russia*, no. 9390/05, §§ 104-07, 3 November 2011), but also refers to the quality of the law in question,

requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). In order for the law to meet the criterion of foreseeability, it must set forth with sufficient precision the conditions in which a measure may be applied, to enable the persons concerned – if need be, with appropriate advice – to regulate their conduct.

80. The Court notes that the measure in question was taken in accordance with the relevant provisions of the Suppression of Terrorism Act, the Interment and Burial Act and Decree no. 164 of 20 March 2003, which provided that "[the body of a] terrorist who died as a result of an interception of a terrorist act" would not be handed over for burial and that the place of burial would not be revealed.

81. The Court finds that the decisions of 13 April 2006 and the materials submitted by the Government clearly demonstrated the involvement of the applicants' deceased relatives in the attack of 13 October 2005 or in the armed and subversive activities preceding or following it. On the basis of the materials before it (see paragraphs 22-29 above), the Court is satisfied that the refusal of the authorities to return the bodies of the applicants' relatives for burial had a legal basis in Russian law. It also notes that the context of the deaths of Albert Askarbiyevich Zhekamukhov and Azamat Anatolyevich Brayev – police operations aimed at tracking down and arresting armed insurgents – were clearly related to the interception of their terrorist activities.

82. In the Court's view, the remaining questions related to the measure's lawfulness, such as the foreseeability and clarity of the legal acts and, in particular, the automatic nature of the rule and the alleged vagueness of certain of its notions, are closely linked to the issue of proportionality and fall to be examined as an aspect thereof, under paragraph 2 of Article 8 (see *Sabanchiyeva and Others*, cited above, § 127 and *Maskhadova and Others*, cited above, § 216).

(ii) Legitimate aim

83. The Court notes that the Government justified the measure with reference to ruling no. 8-P of 28 June 2007 of the Constitutional Court, which mentioned in relation to the section 14(1) of the Interment and Burial Act and Decree no. 164 of 20 March 2003 that the adoption of the rule was justified by "the interest in fighting terrorism and in preventing terrorism in general and specific terms and providing redress for the effects of terrorist acts, coupled with the risk of mass disorder, clashes between different ethnic groups and aggression by the next of kin of those involved in terrorist activity against the population at large and law-enforcement officials, as well as the threat to human life and limb", and lastly the need to "minimise the informational and psychological impact of the terrorist act on the population, including the weakening of its propaganda effect". The

Constitutional Court also noted that "the burial of persons who took part in a terrorist act, in close proximity to the graves of the victims of those acts, and the observance of rites of burial and remembrance with the paying of respects, as to a symbol or an object of worship, serve as a means of propaganda for terrorist ideas and also cause offence to relatives of the victims of the acts in question, creating the preconditions for heightened inter-ethnic and religious tension" (see *Sabanchiyeva and Others*, cited above, § 33 and *Maskhadova and Others*, cited above, § 125).

84. Regard being had to the above explanations, the Court is satisfied that the measure in question could be considered as having been taken in the interests of public safety, for the prevention of disorder and for the protection of the rights and freedoms of others.

85. It remains to be seen whether the adopted measure was "necessary in a democratic society" for the stated aims.

(iii) Necessary in a democratic society

(α) General principles

86. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001 and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008).

87. The object and purpose of the Convention, being a human rights treaty protecting individuals on an objective basis (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 145, ECHR 2010), call for its provisions to be interpreted and applied in a manner that renders its guarantees practical and effective (see, among other authorities, *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37). Thus, in order to ensure "respect" for private and family life within the meaning of Article 8, the realities of each case must be taken into account in order to avoid the mechanical application of domestic law to a particular situation (see, as a recent authority, *Nada v. Switzerland* [GC], no. 10593/08, §§ 181-186, 12 September 2012).

88. The Court has previously found that, for a measure to be regarded as proportionate and as necessary in a democratic society, the possibility of recourse to an alternative measure that would cause less damage to the fundamental right at issue whilst fulfilling the same aim must be ruled out (see *Nada*, cited above, § 183).

89. The final evaluation of whether the interference is necessary remains subject to review by the Court in order to ascertain conformity with the requirements of the Convention. A margin of appreciation must be left to

the competent national authorities in this connection. The breadth of this margin varies and depends on a number of factors, including the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference (see *S. and Marper*, cited above, § 102). The Court has on many occasions stressed that it was aware that States faced particular challenges posed by terrorism and terrorist violence (see, *mutatis mutandis*, *Brogan and Others v. the United Kingdom*, 29 November 1988, § 61, Series A no. 145-B; *Öcalan v. Turkey* [GC], no. 46221/99, §§ 104, 192-196, ECHR 2005-IV; *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 115-116, ECHR 2006-IX; and *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 212, ECHR 2011 (extracts)). The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (see *Connors v. the United Kingdom*, no. 66746/01, § 82, 27 May 2004, with further references). Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I).

(β) Application of these principles

90. In order to address the question whether the measures taken in respect of the applicants in relation to the bodies of their deceased relatives were proportionate to the legitimate aims that they were supposed to pursue, and whether the reasons given by the national authorities were "relevant and sufficient", the Court must examine whether the Russian authorities took sufficient account of the particular nature of the case and whether the adopted measure, in the context of their margin of appreciation, was justified in view of the relevant circumstances of the case.

91. In doing so, the Court is prepared to take account of the events preceding the decision of 15 May 2006 and the fact that the threat of further attacks or clashes between various ethnic and religious groups residing in Nalchik was quite serious. However, the use of the measure in question must be explained and justified convincingly in each individual case (see, *mutatis mutandis*, *Nada*, cited above, § 186).

92. The Court would note at the outset as regards the applicants' criticism of the allegedly excessive breadth of some of the notions and other alleged defects in the applicable pieces of the legislation that in cases arising from individual petitions its task is usually not to review the relevant legislation or a particular practice in the abstract. Instead, it must confine itself as far as possible, without losing sight of the general context, to examining the issues raised by the case before it. Here, therefore, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the above rule, but to determine, *in concreto*, the effect of the interference on the applicants' right to private and family life (see, as a

recent authority, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 68-70, 20 October 2011).

93. Turning to the circumstances of the present case, the Court notes that as a result of the decision of 15 May 2006 the applicants were completely deprived of an opportunity, otherwise guaranteed to the close relatives of any deceased person in Russia, to organise and take part in the burial of the body of a deceased family member and also to ascertain the location of the gravesite and to visit it subsequently (see *Sabanchiyeva and Others*, cited above, § 65 about the relevant provisions of the Interment and Burial Act). The Court finds that the interference with the applicants' Article 8 rights resulting from the said measure was particularly severe in that it completely precluded them from any participation in the relevant funeral ceremonies and involved a ban on the disclosure of the location of the grave, thus permanently cutting the links between the applicants and the location of the deceased's remains. In this connection the Court would also refer to the practice of various international institutions which in cases involving the application of similar measures considered such interference with the applicants' rights as particularly severe (see *Sabanchiyeva and Others*, cited above, §§ 92-96).

94. The Court further observes that the investigation established that the deceased persons referred to by the applicants participated in the armed insurgency and carried out a terrorist attack in the town of Nalchik on 13 October 2005 (see paragraphs 22-29 above). Having examined the materials in the case file, the Court is prepared to use these factual findings in its further analysis.

95. Having regard to the nature of the activities of the deceased, the circumstances of their death and the extremely sensitive ethnic and religious context in this region of Russia, the Court cannot exclude that some measure limiting the applicants' rights in respect of the funeral arrangements of the deceased persons could be found to be justified under Article 8 of the Convention in pursuance of aims mentioned by the Government (see *Sabanchiyeva and Others*, cited above, § 140; and *Maskhadova and Others*, cited above, § 230).

96. The Court can, in principle, accept that depending on the exact location at which the ceremonies and the burial were to take place, in view of the character and consequences of the deceased persons' activities and other relevant contextual factors, the authorities could be reasonably expected to intervene with a view to avoiding possible disturbances or unlawful actions by people supporting or opposing the causes or activities of the deceased during or after the relevant ceremonies as well as addressing other issues mentioned by the Government which may arise in this connection.

97. The Court is also able to accept that in organising the relevant intervention the authorities were entitled to act with a view to minimising

the informational and psychological impact of the terrorist act on the population and protecting the feelings of relatives of the victims of the terrorist acts. Such intervention could certainly limit the applicants' ability to choose the time, place and manner in which the relevant funeral ceremonies and burials were to take place or even directly regulate such proceedings.

98. At the same time, the Court finds it difficult to agree that any of the stated goals were capable of validating all of the aspects of the measure in question. More specifically, it does not discern in these goals a viable justification for denying the applicants any participation in the relevant funeral ceremonies or at least some kind of opportunity for paying their last respects to the deceased person.

99. The Court finds that the authorities failed to carry out any such assessment of the relevant factors in the present case. The relevant official did not take the decision using a case-by-case approach and included no analysis which would take into account the individual circumstances of each of the deceased and those of their family members (see paragraph 34 above). That was so because the applicable law treated all these questions as irrelevant, the decision of 15 May 2006 being a purely automatic measure. In view of what was at stake for the applicants, the Court considers that this "automatic" character ran contrary to the authorities' duty under Article 8 to take appropriate care that any interference with the right to respect for private and family life should be justified and proportionate in the individual circumstances of the case (see *Sabanchiyeva and Others*, cited above, § 144 and *Maskhadova and Others*, cited above, § 235).

100. The Court reiterates that in order to act in compliance with the proportionality requirements of Article 8, the authorities should first rule out the possibility of having recourse to an alternative measure that would cause less damage to the fundamental right at issue whilst fulfilling the same aim. In the absence of such an individualised approach, the adopted measure mainly appears to have a punitive effect on the applicants by switching the burden of unfavourable consequences in respect of the deceased persons' activities from those persons onto their relatives or family members (see *Sabanchiyeva and Others*, cited above, § 145 and *Maskhadova and Others*, cited above, § 236).

101. In sum, having regard to the automatic nature of the measure and the authorities' failure to give due consideration to the principle of proportionality, the Court finds that the measure in question did not strike a fair balance between the applicants' right to the protection of private and family life, on the one hand, and the legitimate aims of public safety, prevention of disorder and the protection of the rights and freedoms of others on the other, and that the respondent State has overstepped any acceptable margin of appreciation in this regard.

102. It follows that there has been a violation of the applicants' right to respect for their private and family life, as guaranteed by Article 8 of the Convention, as a result of the decision of 15 May 2006.

III. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

103. Relying on Article 13 read in conjunction with Article 8 of the Convention, the applicants also complained about the lack of an effective remedy in respect of the authorities' refusal to return the bodies of their deceased relatives.

Article 13 of the Convention

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

104. The Government stated that all of the applicants had received official notification and replies from the authorities and that no restrictions on access to a court had been imposed in connection with the decisions in question.

A. Admissibility

105. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Applicable principles

106. The Court observes that Article 13 guarantees the availability at national level of a remedy by which to complain about a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention, but the remedy must in any event be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions

of the authorities of the State (see *Büyükdağ v. Turkey*, no. 28340/95, § 64, 21 December 2000, with the cases cited therein, especially *Aksoy*, cited above, § 95). Under certain conditions, the aggregate of remedies provided for under domestic law may satisfy the requirements of Article 13 (see, in particular, *Leander v. Sweden*, 26 March 1987, § 77, Series A no. 116).

107. However, Article 13 requires that a remedy be available in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 54, Series A no. 131). It does not go so far as to guarantee a remedy allowing a Contracting State's laws to be challenged before a national authority on the ground of being contrary to the Convention (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 40, Series A no. 247-C), but seeks only to ensure that anyone who makes an arguable complaint about a violation of a Convention right will have an effective remedy in the domestic legal order (ibid., § 39).

2. Application of those principles to the present case

108. The Court is of the opinion that, in view of its finding that the grievance under Article 8 was admissible (see paragraph 72 above), the complaint is arguable. It therefore remains to be ascertained whether the applicants had, under Russian law, an effective remedy by which to complain of the breaches of their Convention rights.

109. Having regard to the circumstances of the case, the Court notes the absence of effective judicial supervision in respect of the decision of 15 May 2006. Admittedly, the applicants' situation has improved to some extent with the adoption by the Constitutional Court of its Rulings no. 8-P of 28 June 2007 and no. 16-P of 14 July 2011. Nonetheless, even after the above-mentioned changes the courts remained competent to review only the formal lawfulness of the measure and not the need for the measure as such (see paragraphs 44-46 above). In this respect, the Court finds that the relevant legislation did not provide the applicants with sufficient procedural safeguards against arbitrariness (see *Sabanchiyeva and Others*, cited above, §§ 153-156 and *Maskhadova and Others*, cited above, §§ 244-246).

110. In such circumstances, the Court finds that the Government was unable to demonstrate that the domestic legal system provided for an effective judicial supervision in respect of the decision of 15 May 2006 and that the applicants did not have any effective remedy in respect of the Convention violations alleged by them.

111. Accordingly, the Court concludes that there has been a violation of Article 13, taken together with Article 8.

IV. ALLEGED VIOLATION OF ARTICLES 3 AND 9 OF THE CONVENTION

112. The applicants also complained in addition to their submissions under Article 8 of the Convention that the refusal of the authorities to return the bodies of their relatives had been contrary to Articles 3 and 9 of the Convention.

113. On the basis of the material submitted, the Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the case is not inadmissible on any other grounds. It must therefore be declared admissible.

114. Regard being had to the particular circumstances of the present case and to the reasoning which led it to find a violation of Article 8 and Article 13, taken together with Article 8, the Court finds that there is no cause for a separate examination of the same facts from the standpoint of Articles 3 and 9 (see also *Sabanchiyeva and Others*, cited above, §§ 157 and 158; and *Maskhadova and Others*, cited above, §§ 248-249).

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

115. The applicants were of the view that the refusal of the authorities to return the bodies of their relatives had been discriminatory, because the legislation in question was aimed exclusively at followers of the Islamic faith. They relied on Article 14 of the Convention, which provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

116. The Government denied this allegation and submitted that the decision in question was not discriminatory.

117. Having considered the materials submitted by the parties, the Court finds no indication which would enable it to conclude that the legislation in question was directed exclusively against followers of the Islamic faith or that the applicants were treated differently from the people in a relevantly similar situation solely on the basis of their religious affiliation or ethnicity (see *Sabanchiyeva and Others*, cited above, § 162 and *Maskhadova and Others*, cited above, § 253).

118. The Court finds that this part of the application is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

120. The applicants claimed that they had sustained very serious non-pecuniary damage and each asked for compensation in the amount of 20,000 euros (EUR). They also requested that the Court order the respondent Government to hand over the remains of their relatives to their family members or to disclose information regarding the circumstances of their burial, including the whereabouts of their graves, and to repeal the domestic legislation in question.

121. The Government submitted that these claims were unfounded and generally excessive.

122. The Court considers that, in the circumstances of the present case, the finding of a violation of Article 8 of the Convention, taken alone and in conjunction with Article 13, constitutes sufficient just satisfaction for the applicants.

B. Costs and expenses

123. The applicants also claimed EUR 8,018 for the legal and other costs incurred in the Strasbourg proceedings.

124. The Government submitted that the amounts claimed were excessive and unjustified.

125. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the material in its possession, the Court considers it reasonable to award the applicants the sum requested plus any tax that may be chargeable. The amount awarded shall, as requested by the applicants, be payable to Stichting Russian Justice Initiative directly.

C. Default interest

126. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the applicants' complaints under Articles 3 and 9 of the Convention as well as their complaints under Article 8, taken alone and in conjunction with Article 13 of the Convention, about the refusal to return the bodies of the deceased to their families admissible and the remainder of the application inadmissible;

2. *Holds* unanimously that there has been no violation of Article 3 of the Convention on account of the conditions in which the bodies of the deceased were stored and displayed for identification;

3. *Holds* by 6 votes to 1 that there has been a violation of Article 8 of the Convention in respect of all of the applicants on account of the decision of 15 May 2006;

4. *Holds* unanimously that there has been a violation of Article 13, taken together with Article 8, on account of the lack of an effective remedy in respect of the decision of 15 May 2006;

5. *Holds* unanimously that in view of its previous conclusions under Articles 8 and 13 of the Convention the case requires no separate examination under Articles 3 and 9 of the Convention;

6. *Holds* unanimously
   (a) that the respondent State is to pay the applicants jointly EUR 8,018 (eight thousand eighteen euros), in respect of costs and expenses, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, plus any tax that may be chargeable to the applicants on the above amount, to be paid into the bank account indicated by the applicants' representative organisation;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

I.B.L.
S.N.

DECLARATION OF JUDGE DEDOV

I do not share the majority's conclusions under Article 8 of the Convention, for the reasons stated in the separate opinion of Judges Hajiyev and Dedov in the *Sabanchiyeva and Others v. Russia* judgment.